In the United States
Circuit Court of Appeals
For the Ninth Circuit

No. 5735

YEE MON,

Appellant,

vs.

LUTHER WEEDIN, as Commissioner of Immigration, at the Port of Seattle, Washington.

Respondent.

APPEAL FROM THE UNITED STATES DISTRICT COURT, FOR THE WESTERN DISTRICT OF WASHINGTON, NORTHERN DIVISION

Hon. JEREMIAH NETERER, *Judge*

Brief of Appellant

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STATEMENT OF THE CASE

The petitioner is applying for admission into the United States as the son of a native-born (Chinese) citizen of the United States. The immigration authorities concede that the petitioner's father, Yee Ngoey, is a citizen of the United States, and therefore the sole question in this case is whether or not the record proves the relationship of father and son between Yee Ngoey and Yee Mon (Moon).

ARGUMENT

PROOF OF RELATIONSHIP

As stated above, the citizenship of the father is conceded, and he has made several trips to China and was re-admitted to the United States on each occasion as a citizen. He was in China at a time to make possible the paternity in this case, for in record No. 1430-10/11, on June 1, 1915, on board the S. S. Magnolia, just before he was landed, the father is recorded in the immigration record as stating that he had a son in China named Yee Moon, *two years of age* (Chinese calendar). The present applicant was born in 1914, and when he applied for admission at the Port of Seattle he was only *fourteen years old.* In the same record, on November 12, 1919, the father again testified that he had a son in China named Yee Moon, *six* years old.

In record No. 2500-2442, on board the S. S. Prince Arthur, July 13, 1922, the father again identified this petitioner as Yee Moon, aged *nine* years.

In record No. 11249-88, on page 3, in December, 1916, the father again identified the petitioner as his third son, Yee Moon, *three* years old.

In record No. 8866-9/18, on October 2, 1924, the father again identified this petitioner as his third son, named Yee Moon.

In record No. 2500-5147, in the year 1922, the father again identified the present applicant as his son.

Therefore, on six different examinations, in addition to the present applicant's examination in 1928, the father, in 1915, when the boy was two years old, Chinese calendar; in the year 1916, in the year 1919 and twice in the year 1924, identified the present petitioner as his son.

In the year 1922, the petitioner's father brought to the United States two older brothers of the present petitioner, and they were landed at Boston, according to record 2500-5147. The two prior-landed brothers, in 1922, stated that they had a brother in China named Yee Moon, and in the instant record said two prior-landed brothers, who are now residing with their father in Cleveland, Ohio, were examined this year in Cleveland, and not only corroborated their testimony of 1922, but identified the present applicant as their brother.

In order to corroborate this identification of the petitioner's father and his prior-landed brothers, the present petitioner in turn identifies the photographs of his father and the photograph of Yee Sang and Yee Toy, the two prior-landed brothers. Your Honors will note a strong family resemblance in the photographs of

all of these four Chinese, and particularly between the photographs of the father and the present petitioner.

In addition to the previous hearings in which the father has identified his son, the present petitioner, as well as the two prior-landed brothers, there are many intimate answers to questions in this hearing which convinces one that this record proves the claimed relationship. For instance, on page 8 of petitioners testimony and on page 20 of the fathers testimony, in the present record, we find them both testifying that chickens are kept by their family, but that they do not keep pigs. On page 6 of the petitioner's testimony, and on page 17 of the father's, they both testify that their house is a regular five-room house with two kitchens, and that one kitchen is used for cooking and storage and that the other kitchen is unused. On page 2 of the petitioner's testimony, and on page 13 of the father's testimony, we find that they both testify that the appellant has a deceased brother named Yee Ga, and they both give the name of the physician who attended him when he was ill. On page 6 of the petitioner's testimony and on page 18 of the father's testimony, we find that they both testify that they have a rice pounder and rice mill in the sitting room of their home; and in addition thereto the father and the petitioner corroborate one another in practically every particular in

their extended examinations, and their testimony is corroborated on important matters of relationship by the testimony of the two prior-landed brothers.

SO-CALLED DISCREPANCIES

The discrepancies in this case are few, slight and immaterial and do not place the slightest doubt on this well established case of relationship. For instance, only four of these so-called discrepancies are urged, as follows:

(1) It will also be noted that the present applicant was born in 1914, and that his two prior-landed brothers left their home in China for the United States in 1922, when the present applicant was but eight years of age, and *some of the discrepancies charged against the present petitioner date back to the time when this petitioner was but eight years old.* For instance, the two prior-landed brothers were born in Seung Wong Village, and moved to the Wai Lung Lee Village in 1913. Petitioner, fourteen, said something when he was first examined about not having seen his prior-landed brothers, but later testified positively that he had seen them, but as he has not seen them since he was 8 years of age, it might almost to his childish mind appear as though he had never seen them, although he did later testify that he had seen his brothers and identified their photographs. (2) In July, 1922, the father re-

turned from a visit to China, and was followed six months later by the two prior-landed brothers. The petitioner testifies that on that trip the father and two prior-landed brothers came to the United States together. The boy at that time was *only eight years old.* His mind could not be charged with that fact. Although it is not in the record, I asked the father if the petitioner knew whether they came together or not, and the father stated that they left home together, but that the two sons remained in Hong Kong from July until December, the delay being caused by the two prior-landed brothers not being able to secure passage on that boat, through some delay in their papers, and the record shows that the affidavit was made in the year 1920, and naturally the father intended to bring these two boys with him from China on the same boat in the year 1922, but the fact is that *they followed only six months later.* (3) There is no ancestral hall in their home village. The father testified that there is an ancestral hall near the village and the present applicant says there is no ancestral hall near the village. (4) One slight discrepancy mentioned is that the petitioner testified that Yee Jung, his fourteen year old brother, had attended school, and the father testifies that this boy had not attended school. Again I inquired of the father about this inconsistency, and he stated to me

that the petitioner testified correctly, that Yee Jung had attended school, and that if the record shows that he, the father had testified that Yee Jung had not attended school, that such an answer is incorrect, but that he meant a younger son, who is only seven years old, had not attended school as he was too young; so the court will readily see that such so-called discrepancies are not to be used to destroy the rights of citizenship. These are practically the only discrepancies in this whole proven case of relationship.

Some slight discrepancies exist naturally in every record, and some slight discrepancies exist in the leading case on "discrepancies," *Go Lun vs. Nagle,* 22 Fed. (2d) 246, but, likewise, no serious discrepancies exist in the instant case. Judge Rudkin, in the Go Lun case, said that the purpose of these immigration hearings is to inquire into the citizenship or relationship of the appellant, and not for the purpose of developing discrepancies which may support an order of exclusion, regardless of the fact that the question of relationship has been proven.

Now, then, in the instant case, the question of relationship has been proven without any question. The slight discrepancies or differences in testimony developed do not support an order of exclusion regardless of the proven case of relationship.

This case comes clearly within the rule of the decision of the United States Circuit Court of Appeals for the Ninth Circuit, in the case of *Go Lun vs. Nagle,* 22 Fed. (2d) 246, opinion written by Judge Rudkin. The opinion cites 13 Fed. (2d) 262; 16 Fed. (2d) 65; and 17 Fed. (2d) 11. The Court there said:

> "A reading of the entire testimony of the three witnesses leaves not the slightest room for doubt, that their relationship was fully established, and that the appellant is a citizen of the United States. A contrary conclusion is arbitrary and capricious, and without support in testimony."

After reviewing the discrepancies in the Go Lun case, supra, this court said:

> "In any event, false swearing and perjury cannot be predicated on a circumstance so trifling. * * *
>
> "The purpose of the hearing is to inquire into citizenship of the appellant, not to develop discrepancies which may support an order of exclusion regardless of the question of citizenship." (citizenship being based upon the question of relationship, the point at issue.)

In the Go Lun case the three main discrepancies, although there were others, refer to a difference in the testimony, (1) in regard to pavement in front of their house; (2) discrepancies in regard to the location of the father's rice land, the appellant stating that he did not know where it was located, although it was

within 500 feet of their house; and (3) discrepancies between the testimony of the witnesses in regard to the windows and skylights in the school house. From a reading of the Go Lun case, supra, and a review of the record in the instant case, it is apparent that the alleged discrepancies in the instant case are no more serious than those in the Go Lun case, where the Circuit Court of Appeals reversed the Department of Labor and the lower court, and directed the issuance of the writ.

Inconsistencies in the testimony of the alien and his witnesses on minor points on which there might be a difference of recollection does not overcome the effect of substantial favorable testimony.

The immigration service refuses to follow the Go Lun decision and the other cases cited, where the records are similar, and admit the present petitioner to the United States, notwithstanding the record proves conclusively that the relationship of father and son exists.

The Court in the Second District follows the ruling of the Ninth Circuit in defining the jurisdiction of courts to review the decisions of the Secretary of Labor in Chinese exclusion cases. The Circuit Court there states:

> "The rule is if it appeared that there was some evidence, and sufficient to satisfy a reasonable man, that the Chinese person claiming the rights of American citizenship was not entitled thereto, he must be excluded. But here the evidence does not warrant a reasonable mind holding that appellant was other than he represented. The result below does not satisfy the requirement of a fair hearing. There is no substantial evidence to support the conclusion below. There was no substantial evidence of contradiction on any material point, which would justify rejecting testimony which amply proves the claim of the appellant that he was the son of Leong Ding. The order is reversed and the writ sustained." 22 Fed. (2d) 926.

In conclusion, then, it must be said in the instant case that, inconsistencies in the testimony of the alien and his witnesses on minor points on which there might be a difference of recollection does not overcome the effect of substantial favorable testimony, and in the instant case this Court can well say as in the Go Lun case, supra:

> "A reading of the entire testimony of the three witnesses leaves not the slightest room for doubt, that their relationship was fully established, and that the appellant is a citizen of the United States."

It is therefore submitted that the writ should be granted in this case.

Respectfully submitted,

HUGH C. TODD,
Attorney for Appellant.